

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

WAVE NEUROSCIENCE, INC.,
Plaintiff,

vs.

BRAIN FREQUENCY LLC,
Defendant.

Civil Action No. 5:23-cv-00626-XR

Demand for Jury Trial

SECOND DECLARATION OF SHANNON LEA MALISH, LCSW-S

1. My name is Shannon Lea Malish, LCSW-S. I am over the age of 18 years old, of sound mind, and competent to make this declaration. The facts stated herein are true and correct and within my personal knowledge.

2. I am a Licensed Clinical Social Worker & Supervisor, Licensed in the State of Texas from Texas State Board of Social Workers Examiners, State of Texas, License # 57103. I am also the Founder and Chief Executive Officer of Defendant Brain Frequency LLC (“Brain Frequency”). I provided a declaration in support of Brain Frequency’s Partial Motion for Summary Judgment Regarding Immunity (“First Declaration”).

3. I have reviewed the allegations in Plaintiff Wave Neuroscience, Inc.’s (“Plaintiff”) response to Brain Frequency’s Partial Motion for Summary Judgment.

4. As I stated in my First Declaration, each of Brain Frequency’s licensees are medical practitioners or those acting under the direction and supervision of medical practitioners who are licensed by the State of Texas or other states to diagnose and treat medical patients. **Exhibit 5,**

attached to my first declaration, is a true and correct copy of an exemplar of the contractual agreements entered into between Brain Frequency and its licensees.

5. The exemplar contract provided by Brain Frequency contains language regarding leasing equipment to licensees to use the Brain Frequency Software, for example, in Sections 1.7, 2.2.2., 4.4, 5.13, and 6.3. Brian Frequency has *never* leased or sold equipment related to the use of its Software, in part because it does not have the financial means to do so, and in part because Brain Frequency does not want to assume responsibility for the equipment used by its licensees. Brian Frequency also has no intention of leasing or selling equipment related to the use of its Software in the future. The license agreement makes clear that licensees are responsible for obtaining and using their own equipment, as set forth in Section 4.1 of the exemplar agreement.

6. Plaintiff alleges that Brain Frequency has promoted the use of its Software by advertising discounts on behalf of affiliated sites, including alleged discounts on Spotify and on the Gladden Longevity Podcast. These statements are incorrect. I have reviewed the information identified by Plaintiff and can confirm that those discounts were not created or promoted by Brain Frequency. They were created by affiliates or other entities, and Brain Frequency was not involved in anyway in the creation or promotion of any such discounts.

I declare under penalty of perjury that the foregoing is true and correct.



Declarant

Executed in Comal County, State of Texas, on the 30 day of May 2024.